

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

OSCAR VALDIVIA-SALAS,

Defendant.

Case No. 18-3039-01-CR-S-RK

MOTION FOR DETENTION

The United States of America, by and through Timothy A. Garrison, United States Attorney for the Western District of Missouri, and the undersigned Assistant United States Attorney, respectfully requests that this Court order the detention of the defendant, Oscar Valdivia-Salas. In support, the United States offers the following suggestions:

1. An indictment has been filed charging the defendant with having unlawfully re-entered the United States after having been removed, in violation of Title 8, United States Code, Section 1326(a).
2. Title 18, United States Code, Section 3142(f)(2) provides that a hearing shall be held by the appropriate judicial officer to determine whether any condition or combination of conditions will reasonably assure the defendant's appearance and the safety of any other person in the community upon a motion of the attorney for the Government or upon the judicial officer's own motion, when there is a serious risk that the defendant will flee, or when there is a serious risk that the defendant will "obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror."

3. Regarding the defendant's risk of non-appearance, the defendant currently has an immigration detainer that has been lodged with the U.S. Marshal Service. The existence of an ICE detainer by itself is not a categorical, per se basis for detention because the Bail Reform Act creates no per se category of persons who must be detained, absent an individualized inquiry into the person's risk of flight or danger to the community. However, the Court can consider the defendant's status and existence of pending immigration proceedings as information relevant when considering other factors under the Act since they indicate prior noncompliance with federal law and thus are analogous to a prior criminal history. In this regard, the defendant is a citizen of Mexico, not lawfully present in the United States. Further, the defendant has a track record of refusal to conform his conduct to what United States' laws require, as shown by his entering and repeatedly re-entering the United States without permission. On March 3, 2015, the defendant was ordered deported from the United States to Mexico. The defendant was subsequently deported on or about March 6, 2015, from the United States to Mexico, at or around Brownsville, Texas. The defendant was subsequently deported a second time from the United States to Mexico, on April 28, 2015, at or around Hidalgo, Texas. The defendant was subsequently deported a third time from the United States to Mexico, on June 18, 2015, at or around Hidalgo, Texas.
4. Regarding the danger this defendant poses to the community, the Government notes the defendant was convicted on February 6, 2015, in Greene County, Missouri, of third-degree domestic assault and was sentenced to 180 days in jail and two years' probation, and his current encounter with law enforcement leading to the instant indictment was his arrest for driving under the influence of alcohol.

5. Finally, the evidence of the defendant's guilt is overwhelming. *See* 18 U.S.C. § 3142(g)(2).

Based upon the foregoing, the United States submits that there is clear and convincing evidence that the defendant poses a danger to the community, and a preponderance of the evidence indicates that there are no conditions the Court could impose that would reasonably assure the defendant's presence at trial. The Government therefore respectfully requests that a detention hearing be held, and that the defendant be detained pending trial of this matter.

Respectfully submitted,

TIMOTHY A. GARRISON
United States Attorney

By: /s/ Steven M. Mohlhenrich
STEVEN M. MOHLHENRICH
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on March 28, 2018, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

/s/ Steven M. Mohlhenrich
STEVEN M. MOHLHENRICH
Assistant United States Attorney